

FILE COPY

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

FINAL DECISION AND ORDER

DUANE B. ASP, R.Ph.,
RESPONDENT.

96 PHM 47
LS9704081PHM

The parties to this action for the purposes of §227.53, Wis. Stats., are:

Duane B. Asp, R.Ph.
307 View Street
Tomah, WI 54660

Wisconsin Pharmacy Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent Duane B. Asp (dob 5/21/34) is and was at all times relevant to the facts set forth herein a registered pharmacist licensed in the State of Wisconsin pursuant to license #6675, originally granted on 8/26/57. At all times relevant to the matters set forth herein before July 28, 1996, respondent was a the managing pharmacist and owner of a community pharmacy in Tomah, Wisconsin, known as Miller Pharmacy, and realized the profits from the sales by this pharmacy, including the sales described in ¶4, below, before July 28, 1996.
2. Respondent was previously reprimanded by the Board in 88 PHM 38, for twice substituting a generic brand for the brand specified by the prescriber although the prescriber had endorsed the prescription "Do Not Substitute," and for then labeling the container as if it contained the brand specified by the prescriber, all without informing the patient or prescriber of the substitution.
3. After July 28, 1996, respondent was a staff pharmacist at Horizon Pharmacy, a community pharmacy in Tomah, Wisconsin, which succeeded to the assets and practice of Miller Pharmacy.
4. Respondent did, on August 9, 1996, permit an unlicensed person to transfer a prescribed drug or device to patients, without a consultation from a licensed pharmacist. One such

transaction was observed by a department investigator Respondent was the pharmacist on duty at the time.

5. The Department has reviewed the Schedule V records of the Miller Pharmacy for the period May 9-July 28, 1996, and of the Horizon Pharmacy for the period July 28, 1996-August 8, 1996. During that period, the following persons were sold C-V codeine products by respondent or his subordinates without a prescription, and without consulting with the patient's physician:

G.S.	11 bottles
J.W.#1	23 bottles
J.W.#2	23 bottles
K.M.	14 bottles
M.R.	19 bottles
M.T.	5 bottles
P.G.	16 bottles
T.G.	5 bottles
W.L.	17 bottles

6. On June 10, 1997, respondent took the Wisconsin Pharmacy Jurisprudence examination and received a passing score of 76

CONCLUSIONS OF LAW

A. The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter pursuant to §450.10, Wis. Stats. and is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

B. The conduct described in ¶4, above, violated § Phar 7.01(1)(c), Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

C. The conduct described in ¶5, above, violated §161.23(1), 161.38(4), and 450.10(1)(a)2. and 6., Wis. Stats. and § Phar 10.03(1),(2), and (3), Wis. Adm. Code. Such conduct constitutes unprofessional conduct within the meaning of the Code and statutes.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that Duane B. Asp is REPRIMANDED for his failure to provide a consultation to the patients described in ¶4 of the Findings of Fact, above.

IT IS FURTHER ORDERED, that respondent's license is permanently LIMITED in that he shall not dispense any C-V substance without a valid prescription from an authorized prescriber. A copy of this order shall be furnished by respondent to any licensee of the board before respondent commences any business relationship with that licensee, whether by employment or business or service contract. Respondent shall not hold any ownership interest in any pharmacy except as a minority shareholder in a publicly held corporation.

IT IS FURTHER ORDERED, that respondent's license is LIMITED in that respondent shall not, before five years from the date of this order, be a managing pharmacist of any pharmacy.

IT IS FURTHER ORDERED, that the license of respondent to practice pharmacy is hereby SUSPENDED until respondent takes and passes the Federal Drug Law Examination. Respondent may not take the examination more than twice without express permission of the board, which shall determine in its discretion under what terms and conditions the respondent may attempt an exam after two attempts. Upon proof of passing the examination, respondent's license shall be forthwith reissued and restored by the staff of the department, with no further action by the board. The suspension is STAYED until February 28, 1998.

IT IS FURTHER ORDERED, that respondent shall FORFEIT \$1,330, to be paid within 90 days of this order.

IT IS FURTHER ORDERED, that respondent shall pay COSTS in this matter in the amount of \$7,600, within 90 days of this order.

IT IS FURTHER ORDERED, that pursuant to §227.51(3), Wis. Stats., and ch. RL 6, Wis. Adm. Code, if the Board determines that there is probable cause to believe that respondent has violated any term of this Final Decision and Order, the Board may order that the license of respondent be summarily suspended pending investigation of the alleged violation.

Dated this 10/23/97, effective as of October 14, 1997.

WISCONSIN PHARMACY EXAMINING BOARD by:

Cynthia A. Berry RPh
a member of the board

akt

1 \asp.stp

STATE OF WISCONSIN
BEFORE THE PHARMACY EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

DUANE B. ASP, R.Ph..
RESPONDENT.

STIPULATION
96 PHM 47


It is hereby stipulated between the above Respondent and the undersigned prosecuting attorney for the Division of Enforcement of the Department of Regulation and Licensing, as follows:


1. This Stipulation is entered into as a result of a pending investigation of licensure of Respondent by the Division of Enforcement. Respondent consents to the resolution of this investigation by agreement and without a hearing on the formal complaint which has been filed in this matter.
2. Respondent understands that by signing this Stipulation, respondent waives the following rights with respect to disciplinary proceedings: the right to a statement of the allegations against respondent; a right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against respondent; the right to call witnesses on respondent's behalf and to compel attendance of witnesses by subpoena; the right to testify personally; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.
3. Respondent is aware of respondent's right to seek legal representation and has obtained legal advice before signing this Stipulation.
4. Respondent denies that his conduct in the sale of Schedule V controlled substances was unprofessional in any manner, but solely to avoid the expenses and uncertainties of litigation, and to settle this matter only, agrees to the adoption of the attached Final Decision and Order by the Board. The parties consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.
6. The parties agree that an attorney for the Division of Enforcement may appear before the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, for the purposes of speaking in support of this agreement and answering questions that the members of the Board and its staff may have in connection with their deliberations on the case.
7. The Board Advisor in this matter may participate freely in any deliberations of the Board regarding acceptance of this Stipulation and the proposed Final Order, and may relate to the Board any knowledge and views of the case acquired during the investigation.

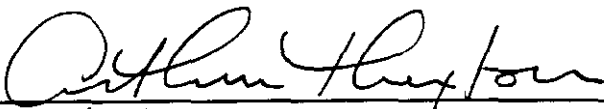
8. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

9. Respondent is informed that should the Board adopt this stipulation, the board's final decision and order is a public record and will be published in the monthly *Report of Decisions* issued by the department. A summary of the order will be published in the *Wisconsin Regulatory Digest* issued semiannually by the Board. This is standard department procedure and in no way specially directed at Respondent. A press release will be prepared and distributed to all press boxes in the State Capitol building, to the press in the community where respondent resides and practices, and to individuals and organizations included on a mailing list maintained by the department. This is standard department procedure and in no way specially directed at Respondent.

10. Respondent agrees to deliver respondent's credentials to the Board immediately upon receipt of the Final Decision and Order resulting from this Stipulation. Respondent will then be provided with the standard credential issued by the department to those practicing under limitations. This is standard department procedure and in no way specially directed at Respondent.


Respondent _____ Date _____


Daniel W. Hildebrand, attorney for Respondent _____ 10/14/97
Date


Prosecuting Attorney _____ 10/14/97
Division of Enforcement Date

Department of Regulation & Licensing

State of Wisconsin

P O Box 8935, Madison, WI 53708-8935
(608)

TTY# (608) 267-2416, hearing or speech
TRS# 1-800-947-3529, impaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On October 23, 1997, the Pharmacy Examining Board
took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a
forfeiture.

The amount of the costs assessed is: \$7,600.00 Case #: LS9704081PHM

The amount of the forfeiture is: \$1,330.00 Case # LS9704081PHM

Please submit a check or a money order in the amount of \$ 8,930.00

The costs and/or forfeitures are due: January 12, 1998

NAME: Duane B. Asp, R.Ph. LICENSE NUMBER: 6675

STREET ADDRESS: 307 View Street

CITY: Tomah STATE: WI ZIP CODE: 54660

Check whether the payment is for costs or for a forfeiture or both:

 X COSTS X FORFEITURE

Check whether the payment is for an individual license or an establishment license:

 X INDIVIDUAL ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

Make checks payable to:

DEPARTMENT OF REGULATION AND LICENSING
1400 E. WASHINGTON AVE., ROOM 141
P.O. BOX 8935
MADISON, WI 53708-8935

#2145 (Rev. 9/96)

Ch. 440.22, Stats.

G\BDLS\FM2145.DOC

For Receipting Use Only

Committed to Equal Opportunity in Employment and Licensing+

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE PHARMACY EXAMINING BOARD

In the Matter of Disciplinary Proceedings Against

Duane B. Asp, R.Ph.,

AFFIDAVIT OF MAILING


Respondent.

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.
2. On October 29, 1997, I served the Final Decision and Order dated October 23, 1997, and Guidelines for Payment of Costs and/or Forfeitures, LS9704081PHM, upon the Respondent Duane B. Asp's attorney by enclosing true and accurate copies of the above-described documents in an envelope properly stamped and addressed to the above-named Respondent's attorney and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 221 159 603.

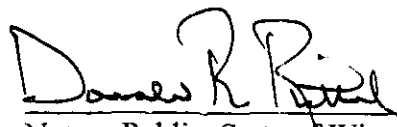
Daniel W. Hildebrand, Attorney
DeWitt, Ross & Stevens
2 E. Mifflin Street, Suite 600
Madison WI 53703-2865



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 29th day of October, 1997.



Notary Public, State of Wisconsin
My commission is permanent.

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review. The Times Allowed For Each. And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN PHARMACY EXAMINING BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

October 29, 1997

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)